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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,
Appellant,

—against—

CITY OF GRIFFIN,
Appellee.

MOTION AND BRIEF ON BEHALF OF WORKERS' DEFENSE LEAGUE AS *AMICUS CURIAE.*

SAMUEL SLAFF,
Counsel for Workers' Defense League.

GEORGE SLAFF (of the New York Bar),
On the Brief.

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ALMA LOVELL,
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Appellee.

Motion for Leave to File Brief as Amicus Curiae.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the Workers' Defense League, an unincorporated association, has obtained the consent of all counsel of record to the filing of the accompanying brief and respectfully moves this Honorable Court for leave to file the same in this case as *amicus curiae.*

January 20th, 1938.

SAMUEL SLAFF,
Counsel for Workers' Defense League.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,
Appellant,

—against—

CITY OF GRIFFIN,
Appellee.

BRIEF OF WORKERS' DEFENSE LEAGUE AS AMICUS CURIAE.

Statement of the Case.

The appellant was tried and convicted in the Recorder's Court of the City of Griffin, Georgia, for violation of the ordinance quoted below:

"ORDINANCE OF CITY OF GRIFFIN

"Be it ordained by the Board of Commissioners of the City of Griffin:

"Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance,

and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

The judgment of conviction was affirmed by the Court of Appeals of Georgia. Its opinion appears at page 16 of the Record and is reported in 55 Ga. 609, 191 S. E. 152.

Interest of the Workers' Defense League.

Among the purposes of the Workers' Defense League is the protection of the rights of assembly, free speech and freedom of the press. It submits this brief as *amicus curiae* because of its opinion that today many municipal officials are attempting to so circumscribe and limit the rights of free speech and press through the medium of unconstitutional ordinances as to render those rights unavailable to any but powerful vested property interests. It is its opinion that this ordinance is unconstitutional on its face. The judgment and experience of the Workers' Defense League is that ordinances of the general type of the one under immediate consideration are mainly invoked against minorities and against the expression of views which offer the possibility, real or imaginary, of curtailment of special privileges.

Argument.

This Court has held that freedom of speech and freedom of the press are protected against state infringement by the Fourteenth Amendment.

Near v. *Minnesota,* 283 U. S. 697;
Gitlow v. *New York,* 268 U. S. 652;
Grosjean v. *American Press Co.,* 297 U. S. 233;
Palko v. *Connecticut,* 82 L. Ed. Adv. Ops. #5, P. 220.

In the last cited case, this Court said of freedom of thought and speech (p. 224):

> "Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom."

In every country in the world where a dictatorship exists there exists also a controlled press.* In stating that a basic element of any democracy is a free and untrammelled press which has the right to have its opinions and messages disseminated as widely as possible, we go no further than this Court itself has gone.

> "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."
>
> *Grosjean* v. *American Press Co., supra,* 250.

We do not deem it necessary to dwell at any length upon the fact that the "press" embraces within its meaning much more than the regularly constituted daily or weekly newspapers or magazines. Many of the greatest struggles for freedom and the rights of man have been fought and won in England and America through the pamphleteering activities of such people as John Milton, Edmund Burke, Thomas

* Report of the Dean of the Graduate School of Journalism of Columbia University, for period ending June 30, 1937.

Paine, Benjamin Franklin, Samuel Adams, William Lloyd Garrison, and hosts of others. Nor can freedom of the press be restricted to the narrow meaning of merely liberty to print. The phrase and the concept are illusory unless they encompass freedom to *communicate* ideas, whether one's own or another's. It must and does include not only the right to write and print, but to publish and circulate as well.

Ex parte Jackson, 96 U. S. 727, 733.

The issue involved in this case is far broader than the question of religious freedom. Within the past decade ordinances of this sort have spotted the country. This one, and many others as well, prohibit or restrict the distribution in public places of printed matter and involve a conscious or unconscious fascist throttling of a free press. Whatever might be said legalistically to justify a restriction on the distribution of commercial advertising matter (and we take no position thereon at this time since it is not germane to the issue—the ordinance being so much broader in its terms) there can be no justification under the guise of the "police power" of submitting the control of the press to the caprice or whim of any administrative official of any city.

Although a City Council would hardly dare include such an explicit provision, the power of the City Manager of Griffin to exercise censorship of the press is implicit in this ordinance. Prior to any issuance of a permit by the City Manager, he may well demand that the purpose and the nature of the literature sought to be distributed be disclosed to him. If the distributor refuses, it requires but little appreciation of practical political administration to

realize that his opportunity of obtaining a permit is nil. If he consents and discloses, there is placed in the hands of the City Manager the power to refuse a permit in the event the social, economic, religious or political views expressed therein fail to meet with his approval. There is thus placed in his control as effective a means of censorship as any which have characterized the worst periods of English history.

> "As early as 1644, John Milton, in an 'Appeal for the Liberty of Unlicensed Printing', assailed an act of Parliament which had just been passed providing for censorship of the press previous to publication. He vigorously defended the right of every man to make public his honest views 'without previous censure'; and declared the impossibility of finding any man base enough to accept the office of censor and at the same time good enough to be allowed to perform its duties."
>
> *Grosjean* v. *American Press Co., supra,* 245.

Moreover, the ordinance in question sets up no standards under which the City Manager must issue a permit. It thus falls within the condemnation of this Court which said in *Herndon* v. *Lowry,* 301 U. S. 242, 264:

> "So vague and indeterminate are the boundaries thus set to the freedom of speech . . . that the law necessarily violates the guaranties of liberty embodied in the Fourteenth Amendment."

This Court, in *Yick Wo* v. *Hopkins,* 118 U. S. 356, quoted with approval at pages 372, *et seq.,* a statement from a Maryland case, which said:

> "It lays down no *rules* by which its *impartial execution* can be secured, or partiality and oppression prevented . . .; and, when we remember that this action or non-action may proceed from

> enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives to the subject a moment's consideration. In fact an ordinance which clothes a single individual with such power hardly falls within the *domain of law,* and we are constrained to pronounce it inoperative and void."

So too, here the ordinance "commits to the unrestrained will of a single public official" the right to grant a person permission to distribute or to bar such person completely from an opportunity of exercising one phase of his right of freedom of the press. So too, the ordinance "lays down no rules by which its impartial execution can be secured or partiality and oppression prevented". So too, "when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives to the subject a moment's consideration". And so too, here the Griffin ordinance which "clothes a single individual with such power hardly falls within the domain of law".

In the unreported case of *City of Summitt* v. *Gramp,* Mr. Justice Case of the New Jersey Supreme Court, setting aside a conviction, said:

> "By the terms of the ordinance the permit is

> to issue only upon the written approval of the Chief of Police, who is given absolute discretion in granting or withholding his approval without any determining factors other than his own impulses. The reservation in an ordinance of discretionary powers to a public officer to give to one and withhold from another the privilege of violating the ordinance is condemned by our cases. . . . It is unreasonable that a Chief of Police, with no rule of determination except his own wishes, should determine who is and who is not to distribute advertisements."

Supporting the same principle are:

> *Lynch* v. *Town of Northview,* 73 W. Va. 609, 81 S. E. 833;
> *Barthet* v. *City of New Orleans,* 24 Fed. 563;
> *State* v. *Conlon,* 65 Conn. 478, 33 Atl. 519;
> *Town of State Center* v. *Barenstein,* 66 Iowa 249, 23 N. W. 652.

A few State Courts have, on occasion, upheld ordinances restricting the distribution of literature in public places on the grounds that such laws were a valid exercise of the police power, *i. e.,* to prevent public danger to pedestrians and property as a result of horses being frightened by swirling handbills and to prevent street littering. Neither of these grounds has any validity as an attempted justification for stifling a free press. The automobile has virtually replaced the horse—and literature other than purely commercial advertising matter does not have a tendency to litter.

> "It cannot be presumed, in the absence of evidence, that the recipients of such pamphlets would throw them away."
>
> *Coughlin* v. *Sullivan,* 100 N. J. L. 42, 126 Atl. 177.

But even if it be assumed that the distribution of the literature in the instant case or other literature of a wider or narrower appeal did in fact have a tendency to and did result in street littering, such a tendency or such a result can not support a law which attempts to root out a fundamental right.

> *Peo.* v. *Johnson,* 117 Misc. 133, 191 N. Y. S. 750, 751.

See also:

> *Ex parte Pierce,* 75 S. W. 264.

"Street littering" can very readily be made an offense, properly punishable, by any municipality which seriously considers that the distribution of literature presents the possibility of such a result. But beyond that and to the extreme presented herein no municipality, whether honestly motivated or otherwise, should be permitted to go.

> "What direction or restraint is required for the public good in the mere act of giving away an advertising card or handbill? This part of the ordinance is not aimed at the littering up of the streets, or the frightening of horses, *but the offense is made complete in itself by the mere act of distributing or giving away of these enumerated articles* . . . . This ordinance not only does not come within the power granted by the charter, but it is also unreasonable and unwarranted." (Italics ours.)
>
> *Peo.* v. *Armstrong,* 73 Mich. 288, 41 N. W. 275, 277.

Mr. Justice Bodine of the New Jersey Supreme Court in a recent case, *Matter of the Application of Nancy Cox for a Writ of Habeas Corpus,* 60 N. J.

L. J. 328, entered an order finding a handbill ordinance of the Borough of Edgewater unconstitutional, the State and Federal constitutional issues having been the sole questions raised on the habeas corpus. The ordinance there required a permit from the Police Department. He stated:

> ". . . I think no one would contend that it (the federal government) could preclude a citizen from distributing, by mail, historical documents or a contemporary comment upon matters of public interest. Neither may a borough, in an attempt to keep its streets clean and unlittered, forbid a citizen from handing to another citizen a document of historic and social interest."

See also:

> *Coughlin* v. *Sullivan,* 100 N. J. L. 42, 126 Atl. 177.

We cannot ignore the economic and political realities inherent in this ordinance and others of a similar nature. These ordinances—and query whether they are not in the main designed for that very purpose—permit municipal officials to stifle labor organizational activities and attacks on inept and corrupt administration of public affairs while at the same time offering lip service to constitutional and statutory rights. In 1924 an ordinance of this general type was used by the City of Jersey City, New Jersey, in an attempt to suppress a criticism of the municipal administration. See *Coughlin* v. *Sullivan, supra.* The very same ordinance there involved and repudiated by Justice Minturn has never been repealed and is today being used by Jersey City, under the guidance of Mayor Frank Hague, to prevent organizational activity of labor unions affiliated with the Committee

for Industrial Organization. (See Record before New Jersey Supreme Court in matter now pending, *Joseph Kish, et al.* v. *Thomas F. Meaney, et al., On Applications for Writs of Certiorari.*)

When the right of any individual to criticize a municipal administration, or to attempt to secure the cooperation and collective activity of others in a lawful labor movement, can be impeded or thwarted under the flimsy pretext of an anti-littering ordinance, we submit that the matter has become one of national importance. The "handbill ordinance phase" of the problem of freedom of speech and press is one without exact federal precedent for this Court has never expressed itself on the issue of these particular ordinances. The problem is a significant one and grows more important daily.

A striking attack on freedom of the press involving daily newspapers was suppressed by this Court in *Grosjean* v. *American Press Co., supra.* The Griffin type of ordinance, although occasionally encompassing newspapers within its scope, is in practical operation rarely if ever used against them; rather, it is used frequently to oppress humble people when their views and policies offend municipal administrations. They require the protection of this Court of their constitutionally guaranteed rights when they use "possibly the only means available by the distribution of circulars and pamphlets to the public". *People* v. *Johnson, supra.*

SAMUEL SLAFF,
Counsel for Workers' Defense League.

GEORGE SLAFF (of the New York Bar),
On the Brief.

SUPREME COURT OF THE UNITED STATES.

No. 391.—October Term, 1937.

Alma Lovell, Appellant,
vs.
The City of Griffin.

Appeal from the Court of Appeals of the State of Georgia.

[March 28, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant, Alma Lovell, was convicted in the Recorder's Court of the City of Griffin, Georgia, of the violation of a city ordinance and was sentenced to imprisonment for fifty days in default of the payment of a fine of fifty dollars. The Superior Court of the county refused sanction of a petition for review; the Court of Appeals affirmed the judgment of the Superior Court (55 Ga. App. 609); and the Supreme Court of the State denied an application for certiorari. The case comes here on appeal.

The ordinance in question is as follows:

"Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance".

The violation, which is not denied, consisted of the distribution without the required permission of a pamphlet and magazine in the nature of religious tracts, setting forth the gospel of the "Kingdom of Jehovah". Appellant did not apply for a permit, as she regarded herself as sent "by Jehovah to do His work" and that such an application would have been "an act of disobedience to His commandment".

Upon the trial, with permission of the court, appellant demurred to the charge and moved to dismiss it upon a number of grounds, among which was the contention that the ordinance violated the Fourteenth Amendment of the Constitution of the United States in abridging "the freedom of the press" and prohibiting "the free exercise of petitioner's religion". This contention was thus expressed:

"Because said ordinance is contrary to and in violation of the first amendment to the Constitution of the United States, which reads:

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'

"Said ordinance is also contrary to and in violation of the fourteenth amendment to the Constitution of the United States, which had the effect of making the said first amendment applicable to the States, and which reads:

'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws'.

"Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press, contrary to the provisions of said quoted amendments.

"Said ordinance also prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion in violation of the terms of said quoted amendments".

The Court of Appeals, overruling these objections, sustained the constitutional validity of the ordinance, saying—

"The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the United States".

While in a separate paragraph of its opinion the court said that the charge that the ordinance was void because it violated a desig-

nated provision of the state or federal constitution without stating wherein there was such a violation, was too indefinite to present a constitutional question, we think that this statement must have referred to other grounds of demurrer and not to the objection above quoted which was sufficiently specific and was definitely ruled upon. The contention as to restraint "upon the free exercise of religion", with respect to the same ordinance, was presented in the case of *Coleman* v. *City of Griffin*, 55 Ga. App. 123, and the appeal was dismissed (October 11, 1937) for want of a substantial federal question. *Reynolds* v. *United States*, 98 U. S. 145, 166, 167; *Davis* v. *Beason*, 133 U. S. 333, 342, 343. But, in the *Coleman* case, the Court did not deal with the question of freedom of speech and of the press as it had not been properly presented. We think that this question was adequately presented and was decided in the instant case. Whether it was so presented and was decided is itself a federal question. *Carter* v. *Texas*, 177 U. S. 442, 447; *Ward* v. *Love County*, 253 U. S. 17, 22; *First National Bank* v. *Anderson*, 269 U. S. 341, 346; *Schuylkill Trust Co.* v. *Pennsylvania*, 296 U. S. 113, 121. This Court has jurisdiction.

Freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action. *Gitlow* v. *New York*, 268 U. S. 652, 666; *Stromberg* v. *California*, 283 U. S. 359, 368; *Near* v. *Minnesota*, 283 U. S 697, 707; *Grosjean* v. *American Press Company*, 297 U. S. 233, 244; *De Jonge* v. *Oregon*, 299 U. S. 353, 364. See, also, *Palko* v. *Connecticut*, decided December 6, 1937. It is also well settled that municipal ordinances adopted under state authority constitute state action and are within the prohibition of the amendment. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20; *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 278; *Cuyahoga Power Company* v. *Akron*, 240 U. S. 462.

The ordinance in its broad sweep prohibits the distribution of "circulars, handbooks, advertising, or literature of any kind". It manifestly applies to pamphlets, magazines and periodicals. The evidence against appellant was that she distributed a certain pamphlet and a magazine called the "Golden Age". Whether in actual administration the ordinance is applied, as apparently it

could be, to newspapers does not appear. The City Manager testified that "every one applies to me for a license to distribute literature in this City. None of these people (including defendant) secured a permit from me to distribute literature in the City of Griffin". The ordinance is not limited to "literature" that is obscene or offensive to public morals or that advocates unlawful conduct. There is no suggestion that the pamphlet and magazine distributed in the instant case were of that character. The ordinance embraces "literature" in the widest sense.

The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation "either by hand or otherwise". There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the City Manager.

We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing". And the liberty of the press became initially a right to publish "*without* a license what formerly could be published only *with* one."[1] While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. See *Patterson* v. *Colorado,* 205 U. S. 454, 462; *Near* v. *Minnesota,* 283 U. S. 697, 713-716; *Grosjean* v. *American Press Company,* 297 U. S. 233, 245, 246. Legislation of the type of the ordinance in question would restore the system of license and censorship in its baldest form.

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the

[1] See Wickwar, "The Struggle for the Freedom of the Press", p. 15.

pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated. *Near* v. *Minnesota, supra; Grosjean* v. *American Press Company, supra; De Jonge* v. *Oregon, supra.*[2]

The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value". *Ex parte Jackson,* 96 U. S. 727, 733. The license tax in *Grosjean* v. *American Press Company, supra,* was held invalid because of its direct tendency to restrict circulation.

As the ordinance is void on its face, it was not necessary for appellant to seek a permit under it. She was entitled to contest its validity in answer to the charge against her. *Smith* v. *Cahoon,* 283 U. S. 553, 562.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[2] See also, Starr *v.* Brush, 185 App. Div. (N. Y.) 261; Dearborn Publishing Company *v.* Fitzgerald, 271 Fed. 479; Ex parte Campbell, 221 Pac. 952; Coughlin *v.* Sullivan, 100 N. J. L. 12. Compare People *v.* Armstrong, 73 Mich. 288; City of Chicago *v.* Schultz, 341 Ill. 208; People *v.* Armentrout, 118 Cal. App. 761.